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S.A(MD)No.200 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 14.02.2022

DELIVERED ON : 17.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A(MD)No.200 of 2019

and

C.M.P(MD)No.4184 of 2019

1.Balasingh

2.Priyanka

3.Brindha

4.Achuthakumar

5.Belsi Mabel Gladis

... Appellants/Appellants/
Defendants 1 to 4 and 9

Vs.

1.Nageswari

... 1st Respondent/
1st Respondent/Plaintiff

2.Logeswari

3.Karpagavalli

4.Vijayambika

5.Kavitha

... Respondents 2 to 5/
Respondents 2 to 5/
Defendants 5 to 8

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated, 25.01.2019, passed in A.S.No.29 of 2015 on the file of the learned Principal District Judge, Kanniyakumari at Nagercoil confirming the judgment and decree, dated, 26.02.2015 passed in O.S.No.91 of 2011 on the file of the learned II Additional Subordinate Judge, Nagercoil.

For Appellants : Mr.M.P.Senthil

For Respondents : Mr.S.G.L.Rishwanth
for R1
No appearance
for R5

JUDGMENT

The defendants 1 to 4 and 9 are the appellants.



2. The plaintiff has filed a suit for partition of their 1/5th share out of the 1/3rd share of the plaintiffs' mother, Kasthuri Bai. The suit was decreed by the trial Court. The defendants filed A.S.No.29 of 2015 before Principal District Court, Kanyakumari at Nagercoil. The learned Principal District Judge was pleased to dismiss the appeal. As against the concurrent findings, the present second appeal has been filed.

3. The plaintiff has contended that the suit schedule properties originally belonged to one Chinnayan, the plaintiff's grand-father, who passed away on 17.07.1994. The suit schedule properties were the self acquired properties of the said Chinnayan. The Chinnayan's wife, namely, Natchathiram had also passed away on 05.06.1998. Both of them have died intestate, leaving behind 2 sons, namely, Ashok Kumar and Achutha Kumar and a daughter by name, Kasthuri Bai. Kashthuri Bai had died leaving behind 6 issues, namely, the plaintiff and the defendants 5 to 8. The other legal heir of Kasthuri Bai, namely, Kasthuri Thanga Kathiravan had passed away, leaving without any issues.

4. The plaintiff contended that Chinnayan Nadar's elder son, Ashok Kumar had passed away, leaving behind defendants 1 to 3. The younger son Achutha Kumar is impleaded as the 4th defendant in the suit. According to the plaintiff, no partition has been effected till date and the plaintiff is entitled to 1/5th share in the 1/3rd share of her mother Kasthuri Bai.

5. The defendants filed a written statement admitting that the suit schedule properties are the self-acquired properties of Chinnayan, but, contended that Kasthuri Bai has been married away 38 years back, providing cash, jewels and articles and she has got separated from the family. The main defence taken by them in the written statement is that there was an oral partition in the year 2000, in which, the northern half was allotted to the 4th defendant and the southern half was allotted to the father of defendants 1 to 3. The defendants further contended that since they are in possession for a longer period of time and the plaintiff, who is the legal heir of Kasthuri Bai has not made a claim to the suit schedule properties, the defendants have ousted the right of the plaintiff.

6. The trial Court after considering the oral and documentary evidence, arrived at a conclusion that the alleged oral partition pleaded by the defendants has not been proved. In fact the defendants have not filed even a single document to establish the plea of ouster as against the plaintiff. Based upon the said finding, the trial Court decreed the suit as prayed for.

7. The First Appellate Court also concurred with the findings of the trial Court and dismissed the appeal. As against the



8. The learned counsel for the appellants contended that the Courts below have erred in considering the plea of ouster, especially, when the plaintiff has admitted that Kasthuri Bai got separated from the family 35 years back. He further contended that the Courts below have not properly appreciated the pleading that the properties have already been orally partitioned between the sons of Chinnayan.

9. I have carefully considered the submissions made on the side of the appellants.

10. The defendants have admitted the fact that the suit schedule properties are the self-acquired properties of Chinnayan. The defendants have also admitted that the said Chinnayan and his wife, Natchathiram have passed away intestate. The defendants have also admitted the Genealogy projected by the plaintiffs. The defendants have raised only two defences in the written statement. Primarily the defendants have contended that the suit schedule properties have been orally partitioned between the 4th defendant and the father of D.1 to D.3.

11. A perusal of the judgment of the trial Court will clearly indicate that on the side of the defendants not a single document has been filed to establish the oral partition. It is a settled position of law that the burden is upon the party, who asserts oral partition. If really a partition has taken place in the year 2000, the defendants would have filed revenue records in their individual name from the year 2000 till the filing of the suit namely, 2011. However, no document has been produced. Hence, the plea of oral partition has not been proved by the defendants.

12. The defendants have further pleaded that the mother of the plaintiff, namely, Kasthuri Bai had got married and she left the family more than 30 years back and any right of partition has been lost. She has been ousted from the family property. It is also a settled position of law that ouster has to be more strictly construed than the plea of an adverse possession. The possession of one of the co-owners is construed by the possession on behalf of other co-owners also. Unless the defendants plead and prove that they have been dealing with the joint-family property as their individual property, the plea of ouster cannot be said to have been proved. Admittedly, in the present case, except the pleading, regarding ouster, not a single document either revenue record or registered documents have been produced on the side of the defendants to establish the plea of ouster. Apart from these two defences, no other defence has been raised by the defendants in the written statement challenging the suit for partition.

13. In view of the above said discussion, I do not find any <https://hcservices.judges.gov.in/hcservices/> much less a substantial question of law arises for



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consideration in the above second appeal. The judgment and decree of the Courts below are confirmed. The Second Appeal is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

gbg

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Principal District Judge,
Kanniyakumari District at Nagercoil.
- 2.The II Additional Subordinate Judge,
Nagercoil.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-6663[F] dated 17/02/2022)

Judgment made in
S.A(MD)No.200 of 2019
17.02.2022

SVS(CO)

TR(04.03.2022) 4P 6C